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10/588,651	08/07/2006	Georg Geywitz	8369.028.US0000	9253
77407 Novak Druce + Quigg LLP 300 New Jersey Ave, NW Fifth Floor Washington, DC 20001	7590 01/17/2012		<div>EXAMINER</div> <div>LEWIS, TISHA D</div>	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/588,651
Filing Date: August 07, 2006
Appellant(s): GEYWITZ ET AL.

Michael P. Byrne
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/7/2011 appealing from the Office action mailed 5/23/2011.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-20 are pending in the application

Of the above, claims 1, 8-10, 13 and 14 are rejected

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

-The 103(a) rejection of claims 1, 8-10, 13 and 14 as being unpatentable over Tabata et al 6258008 in view of Hess 6000376 and further in view of Mabuchi 6742498.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

FR-2785238-A1, published October 29, 1999

Machine translation of FR-2785238-A1, (July 29, 2010)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by FR 2785238 (IDS). FR discloses an engine torque control system for a powertrain operated as a manual transmission, wherein when at least one approval criteria (starting off and clutch skating) for an engine torque (2) which is dependent on driving state of the vehicle is met (acceleration position and/or gear ratio) , stipulating a default engine torque (4, 6 or 7) which can be reduced relative to a set point engine torque (2a) required by the position of an accelerator [0039] of the vehicle, and wherein the default torque is determined as a function of at least one current engine characteristic (the torques 4, 6, 7 is determined as a function of the predetermined torque 2a because these torques are limited under the torque 2a, so without knowing what the torque 2a is, the control unit wouldn't know the amount of reduction needed for the torques 4, 6, 7, also torque 2a is a current engine characteristic because this torque is considered to be the torque which is occurring when the torques 4, 6, 7 are not used.).

As to claim 10, FR discloses the default torque (4, 6 or 7) deviating (Figure 1) from the setpoint torque (2a) on an action of at least one of a throttle valve, the ignition and the fuel injection of the vehicle (well known in art to have engine torque adjusted using one or all of the above).

As to claim 14, FR discloses the default engine torque in the process of vehicle starting stipulated for avoiding damage to a clutch of the vehicle (torque limiting during starting/restarting lowers clutch demand [0016] which is well known to avoid clutch wear over time).

(10) Response to Argument

Applicant argues that the FR reference does not require approval criteria to be a function of engine torque, however; the recitation in claim 1 discloses that the approval criteria *is satisfied* for an engine torque, not that the criteria has to *be a function of engine torque*. FR does disclose that starting off and clutch slips (considered approval criteria in rejection) is satisfied for an engine torque (2) dependent on the driving state of the vehicle (i.e., gear ratio), therefore; FR does meet the approval criteria recitation in claim 1.

Applicant argues that the FR reference does not determine the default engine torque as a function of at least one current engine characteristic.....wherein the rejection is being maintained based on a *misunderstanding* of what it means for one variable to be a function of another variable *via mathematics*. However, the recitation in claim 1 doesn't disclose that the *"a function"* phrase has to be based on a mathematical determination, further FR does disclose determining the default engine torques (4, 6 or 7) as a function of at least one current engine characteristic which is the engine torque 2a due to the default torques having to be limited under the torque 2a, in other words, without knowing what the torque 2a is, the default torques 4, 6 or 7 couldn't be limited properly.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/TISHA D. LEWIS/

Primary Examiner, Art Unit 3655

January 3, 2012

Conferees:

/JUSTIN HOLMES/

Primary Examiner, Art Unit 3655

/Marc Jimenez/ TQAS TC 3600